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13	UNITED STATES OF AMERICA,	No. CR 12-00723 EJD
14	Plaintiff,	UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE
15	v.)	HEARING AND SENTENCING
16	JOSE FARIAS BARAJAS,	
17	Defendant.	
18		
19	The government opposes defendant Jose Barajas's motion to continue the hearing regarding the	
20	psychologist's report and the defendant's sentencing, both of which are less than a week away (Monday,	
21	September 14, 2015). The requested continuance is the latest in a string of delays by the defense that	
22	have prevented the victim's family from obtaining some bit of closure in this case. The time period	

requested by the defense is particularly inconvenient to the government attorney due to two trials

scheduled before the Court: one in mid-October and one in mid-November. The government requests

supplement the record, it show good cause. Absent such a showing, the sentencing should proceed as

scheduled later that afternoon. After the hearing, the Court will be in a better position to judge whether

that the hearing proceed as scheduled and if at the end of the hearing, the defense wishes to seek to

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it requires additional information from the defense expert.

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The following procedural history in the case demonstrates that the sentencing in this case has been delayed long enough for a diligent defense:

Barajas entered his guilty plea on March 20, 2014. Docket No. 72. Recognizing that the defendant was facing a significant sentence, and to give defense counsel additional time to prepare for sentencing, the original sentencing date was set for October 7, 2014. At the defendant's request, on September 30, 2014, the parties stipulated to a continuance of the sentencing date to January 29, 2015. Docket No. 78. The basis for the continuance was the need for the defense to conduct "sentencing related investigation and evaluations." *Id.* at \P 2. The Court granted this request.

Defendant then sought an additional two-month continuance of the sentencing because the psychologist retained by the defense needed more time to conduct his evaluation of the defendant. Docket No. 84. The Court granted the defendant's request over the government's objection. Docket No. 87. The new sentencing date was March 26, 2015.

On March 13, 2015, the defense psychologist completed his report and a copy was provided to the government and the United States Probation Department ("Probation"). The parties stipulated to continue the sentencing for an additional two months so that Probation could complete an amended PSR that took into account the report and so that the government could evaluate the report and determine if it would seek to retain an expert. Docket No. 102. The new sentencing date was eventually set for May 22, 2015. Prior to the sentencing date, the government made a number of attempts to schedule a meeting with the defense expert psychologist via defense counsel, who expressed a willingness to do so, but never actually produced the expert to speak to the government.

The parties filed their respective sentencing memoranda on May 14, 2015, and appeared for sentencing on May 22, 2015. On May 22, 2015, the government requested a hearing to examine the defense psychologist regarding his report. The Court set the hearing for September 14, 2015, which date was designed to give the parties an opportunity to attempt to resolve the government's questions and concerns about the psychological report.

¹ Co-defendant Rodriguez pled guilty March 26, 2014, and was similarly given additional time to prepare for sentencing, including a later stipulated continuance. He was eventually sentenced on January 29, 2015.

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Shortly after the May 22, 2015 Court appearance, the government provided additional copies of recordings previously produced in discovery, which the defense expert had not previously reviewed, so that the defense expert could review the material and answer the government's questions at the hearing about whether these materials altered the conclusions in his report. Thereafter, on May 29, 2015, the government sent the defense a request for the materials that the defense expert relied upon for his report, including the prior evaluation by the other defense retained expert, so that the government could prepare for the hearing. The defense has not provided any of the requested materials, except the psychologist's curriculum vitae.

In its motion to continue the hearing, the defense raised the recent discussions among the parties about a possible joint recommendation as to the sentencing as a reason for its failure to prepare for the

In its motion to continue the hearing, the defense raised the recent discussions among the parties about a possible joint recommendation as to the sentencing as a reason for its failure to prepare for the scheduled hearing. Those discussions were preliminary in nature, and never progressed because the defense failed to follow through with getting the assurances that the government requested as a precondition to expending efforts on this route to a resolution.

Nothing in the defendant's motion for a continuance would prevent the hearing from going forward as scheduled and then seeking an opportunity at the end of the hearing to supplement the record if it is able to show good cause. If that were permitted, and the defense submitted a supplemental report from its psychologist, the government may seek to have an additional opportunity to question him about the report. Nevertheless, the Court may determine after the hearing that it has sufficient information to make a sentencing determination absent any supplemental materials.

The victim's family deserves a conclusion of these proceedings without unnecessary delay. Federal Rule 32(b)(1). Therefore, the government is requesting that the hearing proceed as scheduled on Monday September 14, 2015 at 9:00 am.

DATED: September 10, 2015 Respectfully submitted,

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